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REMARKS

Claims 1 – 61 are pending in the present Application. Claims 18, 20, 23 – 26, 28, 51, 53, 56 – 59, and 61 have been cancelled, Claims 1, 2, 12, 13, 16, 19, 21, 22, 27, 29 – 35, 45, 46, 49, 52, 54, 55, and 60 have been amended, and Claims 62 – 75 have been added, leaving Claims 1 – 17, 19, 21, 22, 27, 29 – 50, 52, 54, 55, 60, and 62 – 75 for consideration upon entry of the present Amendment. The Specification has been amended for clarity and to address grammatical errors.

The claims have been amended to remove “at least one” from the claims since “a”, “an”, and “the” have been defined in the application as including plural referents (See Paragraph [0010]). Removal of the “at least one” language therefore renders the claim language does not change the scope of the claim and renders the claim language consistent.

The claims have been amended to further claim the present invention, and for consistency of language. Support for these amendment can at least be found in the claims as originally filed, as well as in Paragraphs [0037] and [0038] as originally filed.

Claims 62 – 72 have been added to further claim the present invention. Support for these new claims can at least be found in the claims as originally filed, as well as in Paragraphs [0037] and [0038] as originally filed.

No new matter has been introduced by these amendments or new claims. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 1 – 61 stand rejected under 35 U.S.C. § 102(e), as allegedly anticipated by U.S. Patent Publication No. 2003/0175488 to Asthana et al. Applicant respectfully traverses this rejection.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987).

The present application teaches and claims “an adhesive layer comprising an adhesive material and a resinous copolymer, wherein the adhesive material comprises a polyurethane, wherein the resinous copolymer comprises structural units derived from an alkenyl aromatic compound and a conjugated diene” and also do not disclose “an adhesive layer comprising a

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block copolymer comprising a polyurethane block comprising a structural unit derived from a polyurethane and a styrene block comprising a structural unit derived from styrene". Asthana et al. at least fail to specifically teach the adhesive layer as claimed in the present application. Therefore, Asthana et al. fail to anticipate the claims of the present application. Reconsideration and withdrawal of this rejection are respectfully requested.

Provisional Claim rejections Under Obviousness Type Double Patenting

Claims 1 – 61 have been provisionally rejected under the judicially created doctrine of double patenting over Claims 2, 4, 5, 9, 12 – 18, 20 – 23, 26 – 34, and 40 – 47 of Asthana et al. Applicants respectfully disagree.

It is noted in the Office Action that

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter...

Applicants first note that, the disclosure of the copending application is not relevant with respect to obviousness type double patenting. The issue with respect to obviousness type double patenting is whether the present claims would be obvious in view of the claims of the copending application. Hence the details of what "the reference discloses" are not relevant. For the obviousness type double patenting to be established, the Examiner must establish a *prima facie* case of obviousness over the claims of the copending reference. In the instant application, the present claims are different from the claims of Asthana et al. There is no showing in the Office Action why the present claims would be obvious in view of the *claims* of Asthana et al. Applicants contend that the present claims are non-obvious in view of the claims of Asthana et al.

Additionally, Applicants note that the Examiner directed the Applicants to MPEP §804. MPEP §804.II.B that states:

A rejection based upon nonstatutory double patenting is based on a judicially created doctrine grounded in public policy so as to prevent the unjustified or improper timewise extension of the right to exclude granted by a patent...

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However, in the present situation, both applications claim priority to the same filing date, namely November 30, 2001, and hence are not trying to obtain an improper extension of the right to exclude others.

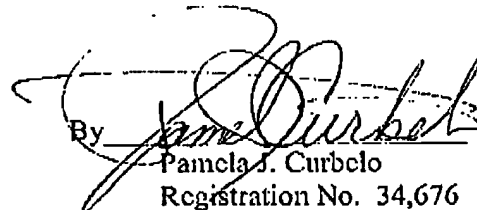
Reconsideration and withdrawal of this provisional rejection are respectfully requested.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the objection(s) and rejection(s) and allowance of the case are respectfully requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 07-0862.

Respectfully submitted,

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